

JANET M. HEROLD  
Regional Solicitor  
DANIELLE L. JABERG (Cal Bar. # 256653)  
Counsel for ERISA  
ROSE DARLING (Cal. Bar # 243893)  
Trial Attorney  
Office of the Solicitor  
UNITED STATES DEPARTMENT OF LABOR  
90 7th Street, Suite 3-700  
San Francisco, California 94103  
Tel.: (415) 625-7744  
Fax: (415) 625-7772  
Email: [darling.rose@dol.gov](mailto:darling.rose@dol.gov)

JS 6

Attorneys for Plaintiff,  
United States Department of Labor

UNITED STATES DISTRICT COURT FOR  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

THOMAS E. PEREZ, Secretary of )  
Labor, UNITED STATES )  
DEPARTMENT OF LABOR, )

Plaintiff, )

v. )

TWELVE SIGNS, INC.; RICHARD W. )  
HOUSMAN; Twelve Signs, Inc. )  
Pension Plan, )

Defendants. )

Case No: 2:13-cv-07325-DSF-AJW

**CONSENT JUDGMENT AND  
ORDER**

Plaintiff SETH D. HARRIS, Acting Secretary of Labor, United States

Department of Labor (“Secretary”) under the authority granted to him by §§

502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974

(“ERISA”), 29 U.S.C. §§ 1132(a)(2) and (5), has filed a Complaint against

TWELVE SIGNS, INC. (“Twelve Signs” or the “Company”), RICHARD W.

1 HOUSMAN (“Housman”), individually, and the TWELVE SIGNS, INC.

2 PENSION PLAN (the “Plan”), an employee benefit plan within the meaning of  
3 Section 3(3) of ERISA, 29 U.S.C. § 1002(3).<sup>1</sup>  
4

5 A. The Secretary, Twelve Signs, Housman and the Plan (collectively, the  
6 “parties”) admit that the Court has jurisdiction over this action under ERISA §  
7 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the Central District of  
8 California under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).  
9

10 B. Defendants Twelve Signs, Housman and the Plan (collectively  
11 “Defendants”) waive filing of an Answer and further waive entering any  
12 affirmative defense, counterclaim, or third-party complaint, or any other defenses  
13 that they may have in this case.  
14

15 C. The parties agree to the entry of this Consent Judgment and Order.  
16  
17 The parties further agree that this Consent Judgment and Order shall fully settle all  
18 claims of the Secretary asserted in the Complaint filed in this matter.  
19

20 D. This Consent Judgment and Order is intended to restore losses to  
21 eligible Plan participants and beneficiaries other than Defendant Housman  
22 (“Eligible Plan Participants”).  
23

24 E. All parties expressly waive Findings of Fact and Conclusions of Law.

25 IT IS HEREBY **ORDERED**, **ADJUDGED**, and **DECREED** that:  
26

27 <sup>1</sup> The Plan is named in the Secretary’s Complaint as a party necessary for complete relief under Fed. R. Civ. P. 19(a).

1           1.       Defendants Twelve Signs and Housman are jointly and severally  
2       liable for **\$363,912.23** losses plus lost-opportunity costs calculated through April  
3       30, 2013, to the Plan (“Loss Amount”), and judgment is hereby entered against  
4       them in that amount. Lost-opportunity costs are calculated applying an interest  
5       rate of five percent (5%) annum.  
6

7           2.       Pursuant to ERISA § 409, 29 U.S.C. § 1109, Defendants Twelve  
8       Signs and Housman are jointly and severally liable and responsible for restoring  
9       the Loss Amount to the Plan in payment installments as set forth in this Paragraph,  
10      plus simple interest at five percent (5%) per annum (“Interest”) on the declining  
11      balance until the Loss Amount is paid in full, as follows:  
12  
13

14          a.       By August 1, 2013, Defendant Housman shall remit \$5,000.00 to the  
15      Plan through the Independent Fiduciary, as provided for in Paragraph 3 below.  
16

17          b.       Thereafter, beginning on August 25, 2013, Defendant Housman shall  
18      remit \$1,000.00 per month to the Independent Fiduciary (as defined herein), as  
19      provided for in Paragraph 3 below, less any applicable life insurance premiums not  
20      to exceed \$400.00 per month, as provided for in Paragraph 6 below. The first  
21      installment is due and payable on August 25, 2013, and the remaining installments  
22      shall be due and payable on or before the twenty-fifth (25<sup>th</sup>) business day of each  
23      succeeding month thereafter, until the Loss Amount plus Interest has been fully  
24      paid.  
25  
26  
27

1 c. The amounts restored to the Plan pursuant to this Paragraph shall be  
2 distributed to Eligible Plan Participants annually on a pro rata basis.

3 d. In the event of default by Defendant Housman in the payment of any  
4 of the monthly installments identified in this Paragraph, the total remaining  
5 balance of the Loss Amount plus Interest shall then become due and payable  
6 within ten (10) business days of the default.  
7

8  
9 3. Jeanne B. Bryant of Receivership Management, Inc., 783 Old Hickory  
10 Boulevard, Suite 255, Brentwood, Tennessee 37027; Tel: (615) 370-0051; Fax:  
11 (615) 373-4336 shall be, and hereby is, appointed Independent Fiduciary  
12 (“Independent Fiduciary”) of the Plan who:  
13

14 a. Will be responsible for collecting, marshaling, paying out, and  
15 administering Plan assets, calculating the account balances of the Eligible Plan  
16 Participants, and taking further action with respect to the Plan as appropriate, and,  
17 if necessary, terminating the Plan when all of its assets are distributed to all of the  
18 Eligible Plan Participants;  
19

20  
21 b. Pursuant to the procedures outlined in the Employee Benefits Security  
22 Administration’s Field Assistance Bulletin 2004-02, as may be amended, must  
23 exercise reasonable care and diligence to identify and locate each Eligible Plan  
24 Participant to the extent the Plan has distributable assets;  
25

26 c. Has all the rights, duties, discretion and responsibilities of a trustee,  
27

1 fiduciary and Plan Administrator under ERISA, including filing annual and final  
2 Form 5500s;

3 d. Has the authority to delegate or assign fiduciary duties as appropriate  
4 and allowed under the law and may retain assistance as needed including attorneys,  
5 accountants, actuaries and other service providers;

6 e. Shall have full access to all data, information and calculations in the  
7 Plan's possession and under its control, including information and records  
8 maintained by the Plan's custodial trustee or service provider;

9 f. Shall have the authority to give instructions respecting the disposition  
10 of assets of the Plan;

11 g. Shall comply with all applicable rules and laws; and

12 h. Shall be entitled to reasonable compensation, fees and expenses, paid  
13 by the Plan. Following the entry of this Consent Judgment and Order by the Court,  
14 the Independent Fiduciary shall be required to present to the Court and the  
15 Secretary an itemized report of fees and expenses on a quarterly basis ("Fee  
16 Report"), including a copy to Defendant Housman at Twelve Signs, Inc., 520  
17 Broadway, Suite 350, PMB 153, Santa Monica, California 90401. The Fee Report  
18 shall include the hourly rates of pay, dates and hours of work, a description of  
19 work performed, and an itemized statement of expenses. It will be deemed that  
20 there is no objection to the Fee Report, unless the Secretary specifically objects to  
21  
22  
23  
24  
25  
26  
27

1 the fees and expenses charged within fifteen (15) business days.

2 4. Defendants shall cooperate fully with the Independent Fiduciary  
3 herein appointed by the Court in providing documents or information they may  
4 have relevant to the Plan's administration and management.  
5

6 5. Defendant Housman hereby forfeits and waives any interest he may  
7 have in any amounts restored to the Plan as a result of the Secretary's Complaint  
8 and this Consent Judgment and Order, including the Loss Amount plus Interest.  
9

10 6. The Independent Fiduciary shall, in the exercise of its discretion,  
11 review the transactions respecting the Plan and issue Defendant Housman an I.R.S.  
12 Form 1099-R on an annual basis for an amount equal to Defendant Housman's  
13 Plan share percentage multiplied by the total amount distributed to Eligible Plan  
14 Participants in the Plan year. Example: If Defendant Housman's Plan share  
15 percentage is 32.5% and \$12,000.00 was distributed to Eligible Plan Participants in  
16 a Plan year, then the Independent Fiduciary shall issue Defendant Housman a form  
17 1099-R for \$3,900.00 at the end of that Plan year.  
18  
19

20 7. Within seven (7) business days of execution of any Form 1099-R, the  
21 Independent Fiduciary shall provide a copy of such form to the Secretary at the  
22 address set forth below in Paragraph 19.  
23  
24

25 8. Within ninety (90) calendar days of execution of this Consent  
26 Judgment and Order, Defendant Housman shall use his best efforts to obtain a life  
27

1 insurance policy from an insurance company that is licensed to sell insurance in the  
2 State of California and that is rated at least "A-" by AM Best (or equivalent) and  
3 that costs no more than the amount of \$400 per month. Such policy, if obtained,  
4 shall (i) be for an amount not less than \$150,000.00; (ii) identify Housman as the  
5 named insured; and (ii) contain an endorsement naming the Plan as the sole  
6 beneficiary of the policy. In the event that payment on the policy is ever made to  
7 the Plan, to the extent that the remaining Loss Amount at that time plus Interest is  
8 less than the amount paid to the Plan under the described life insurance policy, the  
9 Plan shall, within thirty (30) calendar days after receipt of the policy proceeds,  
10 refund the difference to Defendant Housman's estate.

14 9. Defendant Housman shall maintain and renew the life insurance  
15 policy identified in Paragraph 8 above, if obtained, with the Plan as the beneficiary  
16 until such time as the Loss Amount plus Interest has been paid in full, after which  
17 time Defendant Housman may, in his sole discretion name a different beneficiary  
18 or beneficiaries of his own choosing or choose to let the policy lapse. Defendant  
19 Housman shall provide the Independent Fiduciary with a copy of the life insurance  
20 policy and subsequent renewals within thirty (30) calendar days of  
21 obtaining/renewing same. The Independent Fiduciary shall review the policy on  
22 an annual basis to ensure that it current and the Plan is the named sole beneficiary.

26 10. Defendant Housman shall provide the Independent Fiduciary with a  
27

1 copy of the life insurance policy identified in Paragraph 8 above, if obtained, and  
2 subsequent renewals within thirty (30) calendar days of obtaining/renewing same.  
3 If Housman obtains a life insurance policy pursuant to Paragraph 8, he remains  
4 obligated for the same amount of the monthly payments called for in Paragraph 2  
5 until the Loss Amount plus Interest has been fully paid. If Housman is unable to  
6 obtain a term life insurance policy with a premium cost of \$400 per month or less  
7 for any of the options outlined in Paragraph 8 above, then within one-hundred-  
8 twenty (120) calendar days of executing the Consent Judgment and Order,  
9 Defendant Housman shall provide documentary proof to the Secretary at the  
10 address set forth below in Paragraph 19 that he has used his best efforts and has  
11 been unable to obtain such a life insurance policy.  
12

13  
14  
15 11. Defendant Housman agrees that, in the event that he files for  
16 bankruptcy protection under any chapter of the United States Bankruptcy Code,  
17 within thirty (30) calendar days of filing a petition in any U.S. Bankruptcy Court,  
18 he will (i) notify the Secretary of his bankruptcy; and (ii) execute a stipulation with  
19 the Secretary and consent to the entry of an Order that the identified Loss Amount  
20 plus Interest calculated through the date on which he files for bankruptcy is a  
21 nondischargeable debt pursuant to section 523(a)(4) of the U.S. Bankruptcy Code,  
22 11 U.S.C. § 523(a)(4) (“Stipulation”). The Stipulation and entry of a subsequent  
23 Order shall further provide that lost-opportunity costs will continue to accrue at the  
24  
25  
26  
27



1 rate of five percent (5%) annum from the date the relevant nondischargeability  
2 Order is issued until such time as the Loss Amount plus Interest is paid to the Plan  
3 in full.  
4

5 12. Upon appointment of the Independent Fiduciary, Defendant Twelve  
6 Signs is removed as Plan Administrator to the Plan.

7 13. Upon appointment of the Independent Fiduciary, Defendant Housman  
8 is removed as fiduciary of and Trustee to the Plan.  
9

10 14. Defendant Housman is hereby permanently enjoined and restrained  
11 from future service as a fiduciary of, or service provider to, any ERISA-covered  
12 employee benefit plan.  
13

14 15. Defendants Twelve Signs and Housman are permanently enjoined and  
15 restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-  
16 1191c.  
17

18 16. Within ten (10) business days of the Court's entry of this Consent  
19 Judgment and Order, Defendant Housman shall provide a copy of this Consent  
20 Judgment and Order to the Independent Fiduciary.  
21

22 17. Within ten (10) business days of the Court's entry of this Consent  
23 Judgment and Order, Defendant Housman shall provide to the Independent  
24 Fiduciary copies of all checks in his possession that were issued from Plan assets,  
25  
26  
27

1 as well as all other documents related to the Plan in Defendant Housman's  
2 possession.

3 18. If at any time the Secretary determines that Defendant Housman  
4 transferred assets for the purpose of avoiding disclosure or making full repayment  
5 to the Plan as set forth in this Consent Judgment and Order, or materially  
6 misrepresented his financial condition in his Declaration of Financial Status  
7 submitted to the Secretary on May 30, 2012 or any other financial documents  
8 submitted to the Secretary at any time in the future, the Secretary, by appropriate  
9 motion, may reopen his case against Defendants and seek payment of all or part of  
10 the remaining balance of the Loss Amount plus Interest.  
11

12 19. Defendant Housman agrees that on or before April thirtieth (30th) of  
13 every calendar year following the execution of this Consent Judgment and Order,  
14 he will complete under penalty of perjury and submit to the Secretary a fully-  
15 executed Declaration of Financial Status with the required supporting  
16 documentation (a blank form copy of which declaration is attached hereto as  
17 Exhibit A). At the same time, Defendant Housman shall provide copies of the  
18 cancelled checks representing the monthly installment payments made pursuant to  
19 Paragraph 2 above for the prior calendar year, or other proof in writing that such  
20 payments were made. The submission shall be made by reliable overnight delivery  
21 AND fax or email to:  
22  
23  
24  
25  
26  
27

1 Ty Fukumoto  
2 Deputy Regional Director  
3 United States Department of Labor  
4 Employee Benefits Security Administration  
5 1055 E. Colorado Blvd.; Suite 200  
6 Pasadena, California 91106  
7 Fax: 626-229-1098  
8 Email: [fukumoto.ty@dol.gov](mailto:fukumoto.ty@dol.gov)

9 Further, the Secretary reserves the right to request that Defendant Housman submit  
10 a Declaration of Financial Status at any other time, in addition to the required  
11 annual reporting on or before April thirtieth (30th).

12 20. If the documents submitted to the Secretary, as required by Paragraph  
13 19 above, demonstrate that Defendant Housman's gross individual household  
14 income and other earnings, which shall include all property of Housman's  
15 household, including but not limited to any property or assets acquired through  
16 income, investments, dividends, royalties, sales of real, personal or intellectual  
17 property, gifts, inheritance, life insurance, lottery winnings or other gambling  
18 income, exceed \$60,000.00 (sixty thousand dollars) in any twelve-month period,  
19 he will pay the Independent Fiduciary within fifteen (15) business days of receipt  
20 of a notice from the Secretary, a sum equal to twenty percent (20%) of his gross  
21 household income above \$60,000 (sixty thousand dollars), or the remaining  
22 balance of the Loss Amount plus Interest, whichever is less.

23 21. This Consent Judgment and Order does not in any manner affect the  
24 right of the United States Department of Labor to assess a civil penalty of twenty  
25

1 percent (20%) pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l) on all payments of  
2 the Loss Amount plus Interest. Defendants waive the notice of assessment and  
3 service requirement of 29 C.F.R. § 2570.83. Upon assessment, payment of the  
4 penalty shall be made immediately unless Defendants file a petition for waiver or  
5 reduction of the penalty as provided for in 29 C.F.R. §§ 2570.83–2570.87 and the  
6 Secretary agrees to waive or reduce the penalty. In the event that the Secretary  
7 does not agree to waive or reduce the penalty, Defendants shall remit the penalty  
8 amount to the Secretary within sixty (60) calendar days of receipt of the  
9 Secretary's decision denying Defendants' petition. Defendants may not challenge  
10 the applicable recovery amount, the validity of the violations alleged, or their  
11 liability for the violations.  
12

13  
14  
15 22. Defendants Twelve Signs and Housman expressly waive any and all  
16 claims of any nature which they have or may have against the Secretary, the  
17 Department of Labor, or any of its officers, agents, attorneys, employees or  
18 representatives, arising out of or in connection with the allegations contained in the  
19 Complaint on file in this action, any other proceedings or investigation incident  
20 thereto or based on the Equal Access to Justice Act, as amended.  
21

22  
23 23. The Secretary and all Defendants shall each bear their own costs,  
24 expenses, and attorneys' fees incurred to date in connection with any stage of this  
25 proceeding, including but not limited to attorneys' fees which may be available  
26  
27

1 under the Equal Access to Justice Act, as amended.

2 24. Nothing in this Consent Judgment and Order is binding on any  
3 governmental agency other than the United States Department of Labor, Employee  
4 Benefits Security Administration.  
5

6 25. This Court retains jurisdiction of this action for purposes of enforcing  
7 compliance with the terms of this Consent Judgment and Order.  
8

9 26. By signing their names to this Consent Judgment and Order, the  
10 parties represent that they are informed and understand the effect and purpose of  
11 this Consent Judgment and Order.  
12

13 27. This Consent Judgment and Order may be executed in counterparts,  
14 each of which shall be deemed to be an original, but all of which, taken together,  
15 shall constitute one and the same instrument.  
16

17  
18 The Court directs the entry of this Consent Judgment and Order as a final  
19 order.  
20

21 IT IS SO ORDERED.

22 10/21/13

23 Dated: \_\_\_\_\_  
24

  
\_\_\_\_\_  
25 UNITED STATES DISTRICT JUDGE  
26  
27

//  
//

1 Dated: July 31, 2013

2 M. PATRICIA SMITH  
3 Solicitor of Labor

4 JANET M. HEROLD  
5 Regional Solicitor

6 DANIELLE L. JABERG  
7 Counsel for ERISA

8 By: /s/ Rose Darling  
9 ROSE DARLING (Cal. Bar # 243893)  
10 Trial Attorney

11 Attorneys for the Secretary  
12 United States Department of Labor

13 Defendants consent to the entry of this Consent Judgment and Order.  
14

15 Dated: \_\_\_\_\_

16 RICHARD W. HOUSMAN, in his individual  
17 capacity and as President of Twelve Signs, Inc.  
18 and Trustee of Twelve Signs, Inc. Pension Plan  
19  
20  
21  
22  
23  
24  
25  
26  
27